

**UNITED STATES DISTRICT COURT**  
**SOUTHERN DISTRICT OF GEORGIA**  
**SAVANNAH DIVISION**

SHAWN HAMILTON,	)	
	)	
Movant/Petitioner,	)	
	)	
v.	)	Case No. CV408-184
	)	
AL ST. LAWRENCE and THE	)	
ATTORNEY GENERAL OF THE	)	
STATE OF GEORGIA,	)	
	)	
Respondents.	)	

**REPORT AND RECOMMENDATION**

Shawn Hamilton, currently incarcerated at the Chatham County Detention Center, has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 seeking relief from his recent federal conviction. (Doc. 8 at 1, 2.) Section 2254 petitions, however, apply to prisoners seeking relief from *state* court convictions, while 28 U.S.C. § 2255 motions apply to prisoners seeking to vacate or set aside the judgment of a federal court. Consequently, the Court construes Hamilton's § 2254 petition as a motion brought pursuant to § 2255. As Hamilton's federal conviction and sentence are currently on direct appeal before the Eleventh Circuit, United States v. Hamilton, No. 08-10792J (11th Cir. filed Feb. 19, 2008), his § 2255 motion

should be dismissed as premature.

Absent extraordinary circumstances, a defendant may not seek collateral relief while his direct appeal is pending, as the appeal may render the motion moot. United States v. Khoury, 901 F.2d 948, 969 n.20 (11th Cir. 1990) (§ 2255 motion will not be entertained during pendency of a direct appeal); Vita v. United States, No. CV206-408, 2006 WL 2460705, at \*1 (M.D. Fla. Aug. 23, 2006) (citing Fernandez v. United States, 941 F.2d 1488, 1491 (11th Cir. 1990)). Indeed, this Court is without jurisdiction to consider such claims. United States v. Dunham, 240 F.3d 1328, 1329-1330 (11th Cir. 2001). As Hamilton has not alleged any extraordinary circumstances justifying immediate review of his § 2255 motion, it should be **DISMISSED** without prejudice.

**SO REPORTED** and **RECOMMENDED** this 27th day of October, 2008.

  
UNITED STATES MAGISTRATE JUDGE  
SOUTHERN DISTRICT OF GEORGIA